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**NOTE**

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From: Netherlands delegation  
To: Council

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Subject: Outcome of the conference "Finding the balance: Solutions in the debate surrounding patents and plant breeders' rights (Brussels, 18 May 2016)  
- Information from the Netherlands delegation

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On 9 November 2015, the President of the AGRICULTURE Council sent a letter to the President of the COMPETITIVENESS Council about the outcome of an exchange of views held at the AGRICULTURE Council on 22 October 2015, regarding the impact on breeder's rights of a recent decision<sup>1</sup> of the Enlarged Board of Appeal of the European Patent Office on the patentability of plant products emanating from the conventional breeding. In his letter, the President of the AGRICULTURE Council asked the President of the COMPETITIVENESS Council to inform the COMPETITIVENESS Council of the conclusions of the lunch debate held in the AGRICULTURE Council on 22 October 2015, and to address this topic in the COMPETITIVENESS Council. The issue of patents and plant breeder's rights was also discussed at the AGRICULTURE Council on 13 July 2015.

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<sup>1</sup> Decision of 25 March 2015 in cases G2/12 and G2/13

The European Parliament has also expressed its concerns regarding the decision of the Enlarged Board of Appeal of the European Patent Office in a resolution adopted on 17 December 2015. In this resolution, the European Parliament calls on the European Commission and the Member States to safeguard guaranteed access to and the use of material obtained from essentially biological processes for plant breeding. The European Parliament also calls on the European Commission to clarify the scope and interpretation of Directive 98/44/EC on biotechnological inventions, in order to ensure legal clarity regarding the prohibition of the patentability of products obtained from essentially biological processes.<sup>2</sup>

At the COMPETITIVENESS Council of 29 February 2016, the Netherlands Presidency announced the organisation of a symposium together with the European Commission titled 'Finding the Balance – Exploring solutions in the debate surrounding patents and plant breeders' rights'. This symposium took place on 18 May in Brussels. It was attended by more than 200 representatives from Member States, EU institutions, European Parliament and stakeholder organisations. Different solutions for restoring the balance and ensuring access to biological material for plant breeders for future innovation were discussed. They consist of enhanced cooperation between the European Patent Office and the Community Plant Variety Office and sector initiatives concerning patent transparency and access at reasonable terms, like the International Licensing Platform Vegetable.

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<sup>2</sup> [European Parliament resolution of 17 December 2015 on patents and plant breeders' rights \(2015/2981\(RSP\)\)](#)

The findings on plant related inventions of the Commission Expert Group on the development and implications of patent law in the field of biotechnology and genetic engineering were also presented.<sup>3</sup>

Commissioner Bieńkowska (DG GROW) stated in her concluding remarks at the symposium that, in line with the request from the European Parliament the Commission will issue a notice clarifying the patentability of plant related inventions. This notice is currently being drafted by the Commission. It is expected to be presented at the COMPETIVENESS Council of 28 November.

For an impression of the symposium, a short video is available through the following link, where the video can be opened or downloaded: <http://www.rovid.nl/ez/dco/2016/ez-dco-20160520-idhesbcl5-web-hd.mp4>

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<sup>3</sup> See

<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2973&NewSearch=1&NewSearch=1>